

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs March 5, 2010

**IN RE MATTHEW P., ET AL.**

**Appeal from the Juvenile Court for Washington County  
Nos. 31,443 & 31,444      Sharon M. Green, Judge**

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**No. E2009-01530-COA-R3-PT - FILED MARCH 30, 2010**

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The trial court terminated the parental rights of Mary Anne M. (“Mother”) to her two minor children, Matthew P. (“Lee”<sup>1</sup>)(DOB: 2/15/96) and Dustin P. (DOB: 8/31/97)(collectively, “the Children”)<sup>2</sup>upon finding, by clear and convincing evidence, that grounds for termination existed and that termination was in the Children’s best interest. Mother appeals and challenges only the best interest determination. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court  
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the Court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ., joined.

Donna M. Bolton, Johnson City, Tennessee, for the appellant, Mary Anne M.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Joshua Davis Baker, Assistant Attorney General, Nashville, Tennessee, for the appellee, Tennessee Department of Children’s Services.

**OPINION**

I.

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<sup>1</sup>At trial, the Child was referred to by his middle name, “Lee.”

<sup>2</sup>“Lawrence P.” was the father of the Children. He surrendered his parental rights in September 2005. He did not appear at the termination hearing and is not a party to this appeal.

In November 2006, the Tennessee Department of Children's Services ("DCS") filed a petition to terminate Mother's parental rights. A hearing on the petition was held over four days in January, March, and April of 2009. At that time, the Children were thirteen and eleven and had been in foster care for nearly four years. Mother had married since the Children were removed from her custody; at the time of the trial, she and Joe M. ("Husband") had been together for some three years.

DCS's involvement with Mother and the Children went back to 1999, when DCS received a "referral" concerning the older child, Lee, who was then three.<sup>3</sup> A DCS child abuse investigator and an Elizabethton police officer visited Mother at her home in response to a report of suspected child abuse. They examined Lee and observed a bite mark on his back that they described as "adult-sized." Mother denied biting her son and claimed he had fallen. During the visit, Lee leaned over and bit Mother. In response, Mother pulled him to her and bit his forearm in the presence of the investigator and the officer. As a result of the incident, Mother was criminally charged and DCS was prompted to refer the family for non-custodial services.

The Children attended Fairmont Elementary School in their first years of school. Asked whether she recalled anything out of the ordinary with respect to the Children, their principal, Carol McGill, stated that "[e]verything was out of the ordinary." She elaborated that the Children regularly came to school unclean, "very hungry," and in need of medical care, often for lice. In addition, Lee had "pretty serious behavioral issues" in second and third grade. In second grade, he brought a knife to school. Ms. McGill found that working with Mother concerning any issues with the Children was "very difficult." She described Mother as having a "violent" demeanor. Once, school staff reported to DCS that one of the Children had come to school smelling strongly of urine. Mother arrived at the school and a "lockdown" ensued after Mother threatened to "get" the Child's teacher, saying that "her kids weren't dirty." When Mother refused to leave, the police were summoned and escorted her out. On another occasion, Mother was at the school and was prevented from spanking Lee. Mother's arm was in a cast then and she began pacing and told the principal that "she had beat up a guy and that's what she could do with this arm." She also told Ms. McGill that she had a knife in her shoe.

Ms. McGill observed that dealing with Mother, "was always very aggressive and scary to the staff and certainly scary . . . to . . . the boys." The Children were "very, very frightened" that Mother might find out that the school had provided them with clean clothes and they "would beg to put their old clothes on." School officials had a shower installed

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<sup>3</sup>At trial, Mother acknowledged that in addition to the Children, she had six older children who were also taken into DCS custody.

specifically so the Children could be bathed when they arrived at school, and this regularly took place during their three to four years in attendance. McGill had heard Lee say that he wanted to kill himself and wanted to die. She had rarely heard such statements from such a young child in her thirty plus years in education.

In March 2005, when the Children were nine and seven, they were removed from Mother's custody pursuant to an emergency protective order after the family was evicted from the Salvation Army shelter where they had been living. The temporary custody petition alleged that the Children had been neglected and were under an improper guardianship and that Mother was unable to properly care for them. Specifically, it stated that Mother was staying at the shelter after she was removed from several public housing complexes and that she was asked to leave the shelter after she left one of the Children there unattended. In addition, the petition alleged that Mother had been relying on various agencies to provide not only housing, but food and clothing for the Children. Relatives who were contacted refused to take in Mother and the Children. The petition stated that DCS had received eight past "referrals" in reference to the Children, and that Mother was uncooperative with DCS's efforts to investigate the allegations of neglect and alcohol and drug abuse by Mother. In October 2005, the Children were adjudicated to be dependent and neglected.

Upon their removal from Mother's custody, the Children were initially placed in a foster home with an "older" couple where their behavior proved too much for the foster parents to handle. A few months later, the Children were placed in a therapeutic foster home and referred for intensive psychological therapy and services in an effort to better address their severe behavior issues and mental health needs. At the time of trial, the Children had remained in that same foster home for some four years.

From October 2005 through January 2008, four sets of permanency plans were developed for the Children. The initial plans had the dual goal of reunification with Mother and adoption. Among other responsibilities, the plans required Mother to regularly visit the Children; undergo parenting, mental health, and drug and alcohol assessments and follow through with all resulting recommendations; obtain and maintain a stable income and stable and safe housing; and pay court-ordered child support.

After the Children's removal, DCS case workers were unable to reach Mother for a month. She could not be located for the initial child and family team meeting in April 2005 and once located and notified, did not appear for the second meeting. By May, Mother had contacted DCS and visitations with the Children were scheduled for every other week. In addition, DCS case worker Melody Adkins reviewed the permanency plans with Mother. After the first visit, when the Children did not interact much with her, Mother remarked that they were acting differently. Beginning with the next visit, Mother began examining the

Children by lifting their shirts and lowering their pants and constantly questioned them about every mark or scratch she found. The case worker described the visits as being “almost an interrogation” and the Children expressed to their guardian ad litem that they were embarrassed. When Mother was asked to stop these inspections, she became upset and was so loudly argumentative that the visit was cancelled and she was asked to leave the building. While this was going on, the Children hid under a table in a nearby room. Following the incident, the court in June 2005 ordered Mother’s visitations suspended and they never resumed. Around that time, her case worker twice arranged for Mother to attend parenting classes, but both attempts failed. Mother was banned from one program after the third class because of her behavior.

Mother underwent two court-ordered psychological evaluations, but then refused to pursue any of the recommended treatments. In 2005, she failed to follow the recommendations contained in her psychological evaluation. She had been told that she needed further parenting classes and individual therapy to assist her “in gaining insight into how her patterns of behavior have contributed to her current situation.” Upon first interviewing her as part of a November 2007 evaluation, the examiner observed that Mother “displayed an angry, blaming and resentful mood and affect.” Mother reported receiving individual mental health therapy in the mid-1990s, but she was not in counseling at the time of the evaluation. According to Mother, she had “proved in court that [she did not] need counseling.” In his evaluation report, the examiner summarized as follows:

[Mother] has children who are in foster care and she is seeking to regain custody of them. She has had difficulties with cognition and affectivity as well as interpersonal functioning and impulse control. She has displayed affective instability and difficulties with anger management and paranoia which appears to be stress related.

The examiner concluded that Mother would benefit from individual therapy to focus on coping skills, anger management, and interpersonal functioning skills, as well as her depressive symptoms. He noted, however, that “individuals with this profile tend to have some long term adjustment problems that are repetitive and tend to be resistant to psychological treatment,” and that “[Mother’s] personality style is not easily altered.” The 2007 evaluation report was consistent with, and reflected no significant improvements concerning Mother’s issues from, the first evaluation undertaken two years earlier.

Various professionals and outside agencies testified to their difficulties in attempting to assist Mother in meeting her responsibilities under the permanency plans. One foster care counselor recalled that Mother was generally uncooperative and argumentative about the

plans; Mother disagreed with the goals and refused to follow the steps outlined. DCS case manager Adkins stated that Mother never once admitted to any responsibility in the removal of the Children from her custody, making it difficult to assist her with such identified issues as anger management and parenting skills that were necessary to the goal of reunification. According to Adkins, Mother from the outset was unwilling to work with or even talk to her. Adkins could not recall a single meeting when Mother did not have her back turned toward Adkins or any occasions when she spoke directly to Adkins rather than through her attorney. “Options for Families” was contracted by DCS to work with Mother regarding her parenting skills and anger management. Mother informed the first Options counselor that she was a good parent and not in need of parenting skills, so they decided to begin with anger management assistance, but Mother made no progress in that area. The counselor described Mother as being “uncooperative as possible without being completely non-compliant” as she tried to work with her; that is, aside from answering some questions in a workbook, Mother would consistently assert that she had “never” been angry about anything or with anyone. Within two months, Options decided it best to end their service with Mother.

Having made no progress with Mother meeting the permanency plans’ objectives, in a January 2006 affidavit, DCS case manager Adkins stated that “DCS feels [Mother] will never be able to provide a safe and stable environment for [the Children].” DCS moved to terminate Mother’s parental rights on November 3, 2006. The petition alleged four grounds in support of terminating Mother’s rights with respect to the Children: (1) abandonment by failing to provide support; (2) abandonment by failing to provide a suitable home; (3) substantial noncompliance with the permanency plans; and (4) persistent conditions. See Tenn. Code Ann. § 36-1-113(g)(1), (2), and (3); 36-1-102(1)(A)(i) and (ii), - 102(1)(C), (D).

By July 2007, the goal was solely adoption. Mother’s responsibilities continued to revolve around her behavior and parenting skills. The plans continued to emphasize the need for Mother to demonstrate insight into the effects of her behavior. Further, in addition to completing parenting assessments, Mother was required to “proficiently demonstrate [her] comprehension and/or ability to implement” the parenting skills she had learned. Mother and Husband introduced documents indicating that both had attended six of eight classes in a third parenting program in 2007. At trial, however, Mother responded simply “yeah” when asked whether she had learned anything in the parenting classes. In a pre-trial deposition, however, she had replied to the same question that she learned “nothing [she] didn’t already know.” Asked at trial whether anything she had learned particularly stood out, Mother answered “no.”

At the time of the trial, Mother and Husband lived together in a house Husband owned. Two years earlier, Mother had quit her last, short-held job at a BP gas station because she did not like the job and did not get along with a coworker. Husband had been

unemployed since May of 2008, and noted that the mortgage payment was “current until September.” Husband agreed that he could support the Children if they were returned to Mother, but said the support would be “minimal.” In July 2008, Mother and Husband briefly separated when Mother left the home following an argument. At that time, the trial had been set to begin the following month before it was later continued. Three weeks later, Mother called Husband from a restaurant asking for a ride home because a man who had made her a loan was there “hounding her for money.” Later that night, Mother broke her hand when she punched a wall in anger over the night’s events. The couple reunited and by all accounts had a stable relationship at the time of the trial.

The Children’s foster mother testified that the Children’s behavior was much-improved since their arrival. At first, the Children were completely unruly – they constantly fought, experienced bed wetting, urinated on the floor, smeared feces on the walls, and bit each other. In addition, the foster mother was regularly called to address problems the Children had at school. Lee had since achieved a “B” average and both Children were participating in extra-curricular activities. Although the younger child, Dustin, was “struggling” academically, the foster parents were working with him to improve his performance. Neither child took special education classes. They continued to receive in-home counseling each week and seemed to be happy and comfortable with all their essential needs and more being provided. According to the foster mother, both she and her husband had a “really good” relationship with the Children. Within a year after they came to her home, the Children reported incidences of abuse and neglect by Mother and said they had sometimes eaten out of dumpsters while in her care. More recently, the Children no longer talked about their Mother although they were aware of the termination proceeding. The Children had become just “typical little boys” who called her and her husband “mom” and “dad.” The foster parents planned to adopt the Children if they became available.

At the conclusion of the hearing, the trial court granted the petition and terminated Mother’s parental rights. Among its findings, the trial court stated as follows:

[Mother] has maintained through much of this history of this case that she lost custody of [the Children] simply because of a lack of housing. [Mother] continued to maintain this stance at trial testifying that she has had suitable housing by virtue of [Husband], whom she married in June 2006. It is true that the home of [Husband] is a stable home in as much as [Mother] has lived there consistently with [Husband] and his teenage son. . . over much of the last three years; however, this does not therefore mean that the home environment is suitable for the return of the [C]hildren. There is no question that [Husband]

has been a stabilizing influence on [Mother]. In fact, the evidence presented at Court shows that [Husband] is the only stabilizing force in [Mother's] life and there can be no doubt that [Mother's] circumstances would be significantly worse without his presence. Nevertheless, the mere presence of [Husband] does not make [Mother] an appropriate parent able to meet the basic needs of [the Children] free of abuse and neglect. [Husband] testified initially that he had not seen [Mother] angry and that he did not think she had a problem with anger. However, on cross-examination, [Husband] conceded that he had been present when [Mother] lost her temper at the last visitation she had with [the Children]; that he was present when [Mother] lost her temper at parenting classes in September of 2006; that he had a domestic dispute with [Mother] in July of 2008 that led to [Mother] [leaving] the marital residence for a period of approximately two weeks; and that he saw his wife in the first week of August 2008, so angry that she punched a wall causing significant injuries to her hand and arm that required emergency medical attention and the wearing of a brace for a number of weeks.

The court concluded: "Clearly [Husband] is not enough of a good influence upon [Mother] and given [Mother's] explosive temperament there is little or no assurance that he would continue to remain in [Mother's] life." In short, the court in its bench ruling found that "primarily, it is, again, the behavioral issues, confrontational, aggressive and no insight as to her responsibility as far as what led to the removal of the [C]hildren."

Mother filed a timely notice of appeal.

## II.

Mother raises one issue for our review:

The trial court erred in finding that the proof established by clear and convincing evidence that termination of Mother's parental rights is in the best interest of the Children.

## III.

Our review of this bench trial is *de novo*. The trial court's findings of fact, however,

come to us with a presumption of correctness that we must honor unless the evidence preponderates against those findings. Tenn. R. App. P. 13(d). In weighing the preponderance of the evidence, great weight is accorded to the trial court's determinations of witness credibility, which shall not be ignored by us absent clear and convincing evidence against those determinations. *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002). No presumption of correctness attaches to the trial court's conclusions of law. *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002); *Jahn v. Jahn*, 932 S.W.2d 939, 941 (Tenn. Ct. App. 1996).

It is well established that parents have a fundamental right to the care, custody, and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); *In re Drinnon*, 776 S.W.2d 96, 97 (Tenn. Ct. App. 1988). While parental rights are superior to the claims of other persons and the government, they are not absolute, and they may be terminated upon appropriate statutory grounds. See *Blair v. Badenhop*, 77 S.W.3d 137, 141 (Tenn. 2002). A parent's rights may be terminated only upon a finding by the court (1) "that the grounds for termination of parental or guardianship rights have been established; and (2) [t]hat termination of the parent's or guardian's rights is in the best interests of the child." Tenn. Code Ann. § 36-1-113(c)(Supp. 2007); *In re F.R.R., III*, 193 S.W.3d 528, 530 (Tenn. 2006). Both of these elements must be established by clear and convincing evidence. See Tenn. Code Ann. § 36-1-113(c)(1); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002). Evidence satisfying the clear and convincing evidence standard establishes that the truth of the facts asserted is highly probable, *State v. Demarr*, No. M2002-02603-COA-R3-JV, 2003 WL 21946726, at \*9 (Tenn. Ct. App. M.S., filed Aug. 2003), and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence. *In re Valentine*, 79 S.W.3d at 546; *In re S.M.*, 149 S.W.3d 632, 639 (Tenn. Ct. App. 2004).

On our review, we proceed mindful of our duty "to determine whether the trial court's findings, made under this clear and convincing standard, are supported by a preponderance of the evidence." *In re F.R.R., III*, 193 S.W.3d at 530.

#### IV.

As we have noted, the trial court terminated Mother's parental rights upon finding that each of the alleged statutory grounds—two forms of abandonment, substantial noncompliance with a permanency plan, and persistent unremedied conditions—were proven by clear and convincing evidence. Mother raises no issues regarding the trial court's finding of multiple grounds for termination. In the interest of justice, we have nonetheless reviewed the record pertaining to the unchallenged findings of the grounds for termination. Our review leads us to conclude that the evidence does not preponderate against the trial court's findings, made clearly and convincingly, that multiple grounds exist to terminate Mother's parental rights.



We turn now to Mother's sole issue, that of "best interest."

V.

Mother contends that termination of her parental rights was not shown, by clear and convincing evidence, to be in the Children's best interest. The non-exclusive factors a trial court must consider when deciding whether the termination of parental rights is in the best interest of a child are set forth in Tenn. Code Ann. § 36-1-113(i):

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

The list is not all inclusive and there is no requirement that every factor must appear "before a court can find that termination is in a child's best interest." *In re S.L.A.*, 223 S.W.3d 295, 301 (Tenn. Ct. App. 2006)(citing *Dep't of Children's Servs. v. T.S.W.*, No. M2001-01735-COA-R3-JV, 2002 WL 970434, at \*3 (Tenn. Ct. App. M.S., filed May 10, 2002)). In the present case, the trial court made extensive findings of fact relative to its best interest analysis as follows:

The Court has given due consideration to the factors enumerated . . . and finds by clear and convincing evidence that factors (1) through (9) weigh heavily in favor of termination. More particularly, the Court finds that [Mother] has failed to make such an adjustment of circumstance, conduct, or conditions as to make it safe and in the [C]hildren's best interest to be placed in her home at any time within the reasonably near future; that [Mother] has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible; that [Mother] has not maintained regular contact with the [C]hildren; that no meaningful relationship exists between [Mother] and the [C]hildren; that to change caretakers and make a placement with [Mother] will almost certainly have a devastating and harmful impact on the [C]hildren's emotional and psychological condition given the [C]hildren's history of abuse and neglect in the care of [Mother] and the length of time that have been in their prospective adoptive placement; that by virtue of an Order of this Court made on October 19, 2005, [Mother] was found by clear and convincing evidence to have subjected the [C]hildren to abuse and neglect; that the physical environment of [Mother and Husband's] home would not be a safe and appropriate placement

for the [C]hildren because of [Mother's] emotional volatility and her continuous, steadfast denials that she has ever been abusive to or neglectful of either of [the Children]; that [Mother's] mental condition or emotional status would clearly be detrimental to the [C]hildren and would prevent [Mother] from effectively providing safe and stable care and supervision for the [C]hildren as established through her own testimony, her behavior at trial, and the testimony of numerous other witnesses, as well as by two psychological evaluations; and that [Mother] has not paid child support consistent with the child support guidelines. . . .

[DCS] has made reasonable and repeated efforts toward achieving permanency for the [C]hildren.

Mother recites the applicable law and statutory factors, but makes no real attempt to refute the trial court's findings regarding this issue. Her argument, in its entirety, is as follows:

Although an actual balancing test is not required, the examination of these [statutory] factors along with the facts of this case indicates that it was not in the best interest of the [C]hildren to terminate. [Mother] submits that she did have difficulty in obtaining stable housing in the beginning however, she was able to obtain the stability so requested by the Court by way of marriage to [Husband]. The Court felt that this relationship was a substantially stable relationship.

The most we can make of Mother's "argument" is that by virtue of her marriage to Husband, she has achieved "stable housing" by way of a "stable relationship" and that is all that she needed to do to regain custody of the Children. Clearly, this was not the case.

In its bench ruling, the trial court noted the following:

[T]he . . . highest priority requirements in that permanency plan were, of course, housing and then were the parenting, being able to parent the [C]hildren properly. The specific requirement in the permanency plan dealt with not just rote attendance at any counseling or therapy, but . . . gaining insight into the reasons that the [C]hildren were removed and that she would be able to demonstrate insight and how her patterns of behavior

contributed to her current situation. And then . . . a priority . . . that she would be able to proficiently demonstrate her comprehension and her ability to implement parenting skills.

\* \* \*

There's just no proof at all as to that insight into how she contributed to the [C]hildren being removed and as far as showing that she would be able to put proper parenting in[] place. With that being a huge priority of her responsibilities, [the] Court finds . . . substantial noncompliance.

In summary, the evidence showed that Mother, from the time of the Children's removal and throughout the termination proceedings, never worked to address, and never even acknowledged, her behavioral problems that clearly affected her parenting abilities. Given these failures, and her steadfast "resistance to assistance," as one professional put it at trial, the evidence failed to show that Mother "made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the [Children's] best interest to be in the home of the parent or guardian." Tenn. Code Ann. § 36-1-113(i)(1).

In short, we conclude that the evidence preponderates in favor of the trial court's factual findings and that those findings clearly and convincingly support the trial court's finding that termination of Mother's rights is in the best interest of the Children.

## VI.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, Mary Ann M. This case is remanded to the trial court, pursuant to applicable law, for enforcement of the court's judgment and the collection of costs assessed below.

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CHARLES D. SUSANO, JR., JUDGE